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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,629	03/17/2000	Roy P. DeMott	2168	3035

25280 7590 09/19/2002

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EXAMINER	
BEFUMO, JENNA LEIGH	
ART UNIT	PAPER NUMBER
1771	14

DATE MAILED: 09/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-14

Office Action Summary	Application N .	Applicant(s)	
	09/527,629	DEMOTT ET AL.	
	Examin r	Art Unit	
	Jenna-Leigh Befumo	1771	

-- Th MAILING DATE of this communication appears on the c ver sh et with the correspondence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 June 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) *16-23,26-34* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15,24 and 25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *10* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The Office Action mailed September 10, 2002, is vacated in view of the error on the coversheet not properly identifying the action as a Final Rejection.

Response to Amendment

2. Amendment A, submitted as Paper No. 12 on June 19, 2002, has been entered. Claims 1, 7, 10, 15, and 25 have been amended. Therefore, the pending claims are 1 - 34. Claims 16 – 23 and 26 – 34 are withdrawn from consideration as being drawn to a non-elected invention.

3. The amendment to the specification in Amendment A is sufficient to overcome the objection to the drawings in section 12 of the previous Office Action and the objection to the specification in section 13 of the previous Office Action.

4. Amendment A is sufficient to withdraw the objections to claims 7 and 10.

5. Amendment A is sufficient to overcome the 35 USC 112 2nd paragraph rejection to claim 10 in section 19 of the previous Office Action. Additionally, the Applicant's arguments (Amendment A, page 3) are sufficient to overcome the 35 USC 112 2nd paragraph rejection to claim 7 set forth in section 18 of the previous Office Action.

Election/Restrictions

6. Applicant's election without traverse of Group I, claims 1 – 15, 24, and 25 in Paper No. 12 is acknowledged.

Drawings

7. The corrected or substitute drawings were received on June 19, 2002. These drawings are sufficient to overcome the objection set forth in section 11 of the previous Office Action.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1 – 15, 24, and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 6 of Hepfinger, (5,916,723) in view of Schuette et al. (5,725,951) for the reasons of record. The Applicant argues that the obviousness-type double patent is not applicable because the material in Hepfinger was produced to overcome problems with hydrophilic cotton drape fabrics (Amendment A, page 3). While Hepfinger et al. discloses that the fabric was produced to overcome problems with pile fabrics such as stretch, creep, and pilling, no where in Hepfinger et al. does Hepfinger discloses that these problems are unique to hydrophilic cotton fabrics. And even if the fabric is used to replace hydrophilic cotton drape fabrics no where does Hepfinger et al. disclose that a hydrophilic fabric is undesirable or that the hydrophilic properties produce the stretch, creep, or pilling problems. Thus, based on Schuette et al. it would be obvious to add the hydrophilic coating to the polyester fabric to improve the durability and washability of the fabric. Further, if the Hepfinger et al. fabric was created to overcome problems in hydrophilic cotton fabrics such as creep, pilling, and stretch by using synthetic fibers, it would have been obvious for one having ordinary skill in the art to add a hydrophilic coating to the synthetic fibers so that

the synthetic fabric can be used in the same end products as the hydrophilic cotton fabrics which it has replaced. Thus, the rejection is maintained.

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1 – 15, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scheller (4,712,281) in view of Schuette et al. for the reasons of record.

12. Claims 1 – 15, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hepfinger et al. in view of Schuette et al. for the reasons of record.

Response to Arguments

13. Applicant's arguments filed June 19, 2002 have been fully considered but they are not persuasive. The Applicant argues that the fabric recited in claim is different from the three-bar warp knit taught by Scheller (Amendment A, page 4). Further, the Applicant added the limitation that the fabric has a "dimensionally stable stitch pattern". However, Scheller discloses a warp-knit fabric of at least three-bar construction and multifilament pile yarns and monofilament ground yarns. And the fabric taught by Scheller would inherently be "dimensionally stable" to some degree or the fabric would fall apart. Further, since Scheller teaches all the structural limitations of the fabric recited in claim 1, it would inherently be "dimensionally stable". Therefore, the rejection is maintained.

14. Additionally, the Applicant argues that the fabric taught by Hepfinger et al. was produced to overcome problems in hydrophilic cotton drape fabrics (Amendment A, page 4). As set forth above, there is not a teaching in Hepfinger et al. that states the prior art fabrics were hydrophilic

cotton fabrics, and even if the Hepfinger et al. fabric was produced to overcome creep, stretch, and pilling problems in hydrophilic cotton fabrics, there is no teaching the Hepfinger et al. fabric cannot or should not be hydrophilic. In fact, it would have been obvious for one having ordinary skill in the art to add a hydrophilic coating to the synthetic Hepfinger et al. fabric so that the fabric could be used in the same end products as the hydrophilic cotton fabric.

15. Finally, the Applicant argues that there is not motivation in either Hepfinger et al. or Schuette to combine the references (Amendment A, page 4). However, Schuette et al. discloses that adding the hydrophilic coating to textile fabrics to improve their durability, washability, soil release properties, and moisture transport properties. Thus, it would have been obvious for one having ordinary skill in the art to add the hydrophilic coating taught by Schuette to the pile fabric taught by Hepfinger et al. to improve the durability, washability, soil release properties, and moisture transport properties of the fabric. This would not only increase the life time of the fabric, but also increase the number of end uses for the pile fabrics, since it can now be used as a wicking fabric or be used in locations which are heavily soiled and need to be easily cleaned. Thus, Schuette et al. provides motivation to add the hydrophilic coating to the pile fabric taught by Hepfinger et al. Thus, the rejection is maintained.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
September 17, 2002

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700